



DEFENSE LOGISTICS AGENCY
DEFENSE NATIONAL STOCKPILE CENTER
8725 JOHN J. KINGMAN ROAD, SUITE 3229
FT. BELVOIR, VIRGINIA 22060-6223

March 1, 2004

IN REPLY
REFER TO

**AMENDMENT NO. 013
TO
SOLICITATION FOR OFFERS
FOR
VEGETABLE TANNIN EXTRACTS
UNDER
DLA-VTE-001**

This amendment supercedes all prior amendments issued under this solicitation. The above referenced solicitation for the sale of vegetable tannin extracts, is hereby amended as follows:

1. Section A, Paragraph A.1 Introduction (SEP 02)

Delete subparagraph a. in its entirety and substitute with the following:

- a. The Defense Logistics Agency (DLA), Defense National Stockpile Center (DNSC) is soliciting offers for the sale of approximately 6,000 Long Tons (LT) of quebracho in Fiscal Year (FY) 2004 with an option for an additional 6,000 LT of quebracho for sale in FY 2005, which spans October 1, 2004 through September 30, 2005. In the event a contract is awarded with an option for additional material, prices and quantities will be set by execution of supplemental agreement. The execution of a supplemental agreement under this solicitation is subject to approval of the FY 2005 Annual Materials Plan authorizing the sale of quebracho.
- b. The initial offering will be held at 1 PM, local time, Ft. Belvoir, VA., Thursday, March 18, 2004. If all material is not sold, subsequent offerings will be held on the first Tuesday of each month. Offers must be received at the address in Section B.2.a. by 1 PM, local time, Ft. Belvoir, VA. In the event that the first Tuesday of each month is a holiday, or DNSC is otherwise closed at that time, offers for that day will be received at 1 PM, local time, Ft. Belvoir, VA. on the next DNSC business day.

2. Section A, Paragraph A.3 Financial Exposure (MAR 02)

Add the following paragraph:

A.3 Financial Exposure (MAR 02)

- a. DNSC will establish a financial exposure limit (maximum level of business DNSC will allow) for each Offeror. The financial exposure limit shall be determined based upon the following:
 - (1) Financial Position of the Offeror
 - (2) Past Performance

- (3) References (Suppliers, Financial Institutions)
- (4) Credit Reports

- b. If the Contractor reaches its financial exposure limit, subsequent sales will cease until either the Contractor satisfactorily performs existing contracts or DNSC increases the exposure limit.

3. **Section A, Paragraph A.4 Foreign Trade Statistics Regulations (MAR 02)**

Add the following paragraph:

A.4 Foreign Trade Statistics Regulations (MAR 02)

- a. The Contractor shall determine any export license requirements, obtain any export licenses or other official authorization required for export, and carry out any US Customs formalities for the export of any material awarded under this solicitation.
- b. The Contractor shall comply with United States Bureau of Export Administration Foreign Trade Statistics and Export Administration Regulations as set forth in 15 CFR Parts 30 and 732 (as amended by 65 Federal Register (FR) 42556-42575, July 10, 2000 or any subsequent rule making).
- c. If the Contractor is not a United States domestic entity or does not have a physical presence in the United States, and the material is to be exported, the Contractor shall either—
 - (1) Engage a United States Forwarding Agent or other agent in accordance with 15 CFR 30.4(a) and (c); or
 - (2) Engage a United States Order Party, in accordance with 15 CFR 30.4(a)(1)(iii), to conduct all negotiations, correspondence, and arrangements for sale, and to arrange for export of the material purchased.
- d. The Defense National Stockpile Center shall not be named as the United States Principal Party in Interest and will not execute any Shipper's Export Declaration required by the Foreign Trade Statistics regulations.

4. **Section B, paragraph B.1 Submittals (JAN 95)**

Delete Section B.1 in its entirety and substitute with the following:

B.1 Submittals (FEB 03)

Offerors shall submit **all** of the following documents along with the offer unless otherwise noted:

- a. **Section I.1 Sale of Government Property Negotiated Sales Contract (FEB 04)** with the section entitled "Execution by Contractor" completed.
- b. **Section I.2, Item Offer Page(s) – DLA-VTE-001 (FEB 04)** with (1) Base Year Quantity; (2) Base Year Unit Price Per/Lb.; (3) Base Year Total Offer Price; (4) Option Year Quantity; (5) Option Year Unit Price Per/Lb.; (6) Option Year Total Offer Price (7) Company name; (8) Name and title of authorized company official; (9) Signature and Date (10) Telephone number, and (11) Facsimile number.
- c. **Section I.3, Certificate of Independent Price Determination (JAN 01).**
- d. **Section I.4, Certification Regarding Debarment, Suspension, Proposed Debarment, Environmental Compliance and Other Responsibility Matters (JUL 97).**
- e. **Representations, Certifications and Identifications at Section I.5 through I.10.** Offerors please note: If Annual Representations, Certifications and Identifications have previously been submitted they need not be resubmitted. However, **I.3 Certificate of Independent Price Determination and I.4 Certification Regarding Debarment, Suspension, Proposed Debarment, Environmental Compliance and Other Responsibility Matters shall be submitted with each offer.**
- f. Copies of the most recent income statement, balance sheet, and list of credit references for the company and any other documentation that will verify the financial level of business transactions. DNSC may require the Contractor to submit updated information at any time.
- g. Offerors shall submit the financial information requested in paragraph f. to the following address/facsimile number:

Attn: C-2 Vegetable Tannin Extract Contract Specialist
Defense National Stockpile Center
8725 John J. Kingman Road, Suite 3229
Fort Belvoir, VA 22060-6223
Fax: (703) 767-5494
- h. Any other terms the Offeror wishes to negotiate.

5. **Section B, paragraph B.2 General Information (JAN 95)**

Delete Section B.2 in its entirety and substitute with the following:

B.2 General Information (JUL 97)

- a. Facsimile offers and modifications will be accepted in accordance with Section **B.5**. Offers may also be submitted by mail or hand delivered enclosed in a sealed envelope and addressed to:

ATTN: DNSC-R (Bid Custodian)

Defense National Stockpile Center

8725 John J. Kingman Road

Suite 3229

Fort Belvoir, Virginia 22060-6223

Facsimile No: (703) 767-5541

Place the name and address of the Offeror in the upper left corner and the following information in the lower left corner on the face of the envelope:

SOLICITATION OF OFFERS

DLA-VTE-001

- b. The Offeror agrees, if its offer is accepted by the Government within twenty (20) working days from the date specified in the Solicitation for receipt of offers, to purchase any or all material on which offers are made at the price offered and to take delivery of the material within the removal period time specified in the executed **Section I.1 Sale of Government Property Negotiated Sales Contract**.
- c. Unless a designation of agent is on file at DNSC, an Offeror submitting an offer as agent for another party shall submit written proof, either prior to or with the offer, that it is authorized to act as agent and shall tender the offer in the name of the principal.

6. Section B, paragraph B.4 Late Submissions, Modifications, and Withdrawals of Offers (MAR 98)

Delete Section B.4 in its entirety and substitute with the following:

B.4 Late Submissions, Modifications, and Withdrawals of Offers (NOV 00)

- a. Offerors are responsible for submitting offers, and any revisions, and modifications, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. Offerors may use any transmission method authorized by the solicitation (i.e., regular mail, electronic commerce or facsimile).
- b.
 - (1) Any offer, modification, or revision, that is received at the designated Government office after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the sale and—
 - (i) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or
 - (ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government’s control prior to the time set for receipt of offers; or
 - (iii) It was the only offer received.
 - (2) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.
- c. Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of the installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.
- d. If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.
- e. Offers may be withdrawn by written notice at any time before award. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before award. Offers may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award.

- f. Offerors may submit modifications to their offer at any time before closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.
- g. The Contracting Officer must promptly notify any offeror if its offer, modification, or revision was received late, and must inform the offeror whether its offer will be considered, unless contract award is imminent

7. Section B, paragraph B.6 Consideration of Offers (FEB 98)

Delete paragraph B.6 in its entirety and substitute with the following:

B.6 Consideration of Offers (FEB 03)

- a. The Government reserves the right to --
 - (1) Reject any or all offers;
 - (2) Waive any informalities and minor irregularities in an offer;
 - (3) Award a quantity less than the quantity offered on at the unit price offered;
 - (4) Accept any one item or group of items in an offer, as may be in the best interest of the Government.
 - (5) Award quantities in excess of that stated as being available for sale.
- b. Offerors may submit multiple offers at various unit prices and may specify a maximum quantity.
- c. The Government may request specific documentation to support the offer submitted. Failure to provide the documentation, if requested, may result in the Offeror being ineligible for award.

8. Section B, paragraph B.7 Evaluation of Offers (MAR 98)

Delete paragraph B.7 in its entirety and substitute with the following:

B.7 Evaluation of Offers (FEB 03)

- a. Offers will be evaluated for award, based on the best return to the government, base year and option year included.
- b. General - The evaluation factors are listed below in descending order of importance:
 - (1) Unit price.
 - (2) Payment terms.

- (3) Removal schedule.

All evaluation factors other than unit price, when combined, are significantly less important than unit price.

- c. To be considered, offers must meet the following minimum requirements:
 - (1) Submission of the information requested in Section **B.1**; and
 - (2) Submission of a removal schedule which meets or exceeds the provision of Section E.1.
- d. The maximum acceptable payment terms are Net 30 calendar days from DNSC's receipt of current, accurate, and complete Shipping Instructions.

9. **Section B, paragraph B.8 Negotiation Procedures (JUL 97)**

Delete paragraph B.8 in its entirety and substitute with the following:

B.8 Negotiation Procedures (SEP 02)

The Government intends to evaluate offers and award a contract after conducting discussions with all Offerors whose offers have been determined to be within the competitive range. However, the Government reserves the right to award without discussions. Accordingly, Offerors are advised to include their best possible terms in their initial offer.

If the Government determines that holding discussions is in its best interest, the following procedure will be utilized:

- a. **Competitive Range** - The competitive range shall be determined on the basis of price and other factors that are stated in the solicitation and will include all offers which comply with Section **B.7.b.** that have a reasonable chance of being selected for award. Offers not included in the competitive range will not be given further consideration.
- b. **Negotiations/Discussions** - Only Offerors within the competitive range will be contacted to schedule the day and time for discussions to be conducted. Negotiations will be conducted only with the company official signing **Section I.1 Sale of Government Property Negotiated Sales Contract** or a specifically authorized individual identified in Section **I.8 Authorized Negotiators (JUN 95)**.

The content and extent of the discussions is a matter of the Contracting Officer's judgment, based on the particular facts of the sale and each offeror's initial offer.

- c. **Discussion Session** - Only one discussion session per Offeror is intended. In order to facilitate meaningful discussions, Offerors should:
 - (1) Be prepared to discuss:
 - (i) All prices and terms included in the initial offer;
 - (ii) Supporting documentation and justification for the derivation of prices offered and other terms the Offeror wishes to negotiate;
 - (iii) Payment terms (where requested); and

- (iv) Removal schedule
- (2) Arrange to have appropriate support personnel present during discussions, i.e., Purchasing, Marketing, etc.
- d. **Best and Final Offer Requests** - At the conclusion of discussions, all offerors with which discussions were conducted will be requested to submit a best and final offer (BAFO). Oral requests for best and final offers will be confirmed in writing. Each individual BAFO request will include the following:
 - (1) Notice that discussions are concluded;
 - (2) Time and date by which BAFOs must be submitted;
 - (3) Notice that BAFOs are subject to **Section B.4 Late Submissions, Modifications, and Withdrawals of Offers (NOV 00)**;
 - (4) A record of negotiated issues and understandings between the Government and the Offeror (as applicable);
 - (5) A list of remaining questions/deficiencies (if any);
 - (6) A caution to Offerors to provide supporting documentation for any changes to their prior offers as revised during discussions; and
 - (7) Notice that the Government intends to evaluate best and final offers and award a contract without further discussions.
- e. **Best and Final Offer Responses** - BAFOs should strictly conform to the best and final offer request. If no response is received to the BAFO request, the initial offer will be considered as the best and final offer. Changes that are not fully supported by documentation may not be evaluated or considered.
- f. **Subsequent Discussions/BAFO Requests** - Generally, only one best and final offer will be requested. After receipt of best and final offers, discussions will not be reopened unless the Government determines it is in its best interest to do so. If discussions are reopened, an additional request for best and final offers will be issued to all offerors still within the competitive range.

10. **Section B, paragraph B.10 Responsibility Determination (JUN 95)**

Delete paragraph B.10 in its entirety and substitute with the following:

B.10 Responsibility Determination (SEP 02)

- a. No award shall be made unless the Contracting Officer makes an affirmative determination of responsibility.
- b. To be determined responsible and eligible for an award, Offerors shall have adequate financial resources, a satisfactory performance record with DNSC, and a satisfactory record of integrity and ethics. For example, an Offeror may be determined to be non-responsible and therefore ineligible for award if there is a record of poor payment (e.g., checks returned for insufficient funds) or poor performance (e.g., failure to pay for or remove material on time).

In addition to looking at past performance, DNSC will also review the financial statements and references submitted by the Offeror, as well as the current Dun & Bradstreet report and any other credit reports.

11. **SECTION C – INSPECTION (FEB 99)**

Delete SECTION C in its entirety and substitute with the following:

SECTION C – INSPECTION (SEP 02)

- a. Offerors at it's own expense, may inspect and obtain a grab sample of the material. Grab samples shall not exceed one pound. Offerors shall provide a container for each required sample. The Government does not warrant any samples to be representative of the entire item or brand. The Contractor shall provide the Government with any analysis derived from the grab sample(s).
- b. Requests to receive a sample of the material must be made in writing or by facsimile submission to the point of contact listed below. Government personnel require a minimum of five working days to package and ship requested samples.

POINT OF CONTACT: Ms. Winnie McCray
Operations Directorate
8725 John J. Kingman Road, Suite 3229
Fort Belvoir, VA 22060
Telephone: 703-767-7607
FAX: 703-767-7608

- c. Requests shall include the account number of the preferred delivery service and the name and title of the individual receiving the sample. Offerors will be notified by telephone as to the date of the shipment.

12. **Section D, paragraph D.2 Payment Due Date (JUL 97)**

Delete paragraph D.2 in its entirety and substitute with the following:

D.2 Payment Due Date (NOV 02)

- a. Payment due dates will be applied as follows:
 - (1) If payment terms are not extended, payment will be made before shipment of material and before the end of the contract period specified in the executed **Section I.1 Sale of Government Property Negotiated Sales Contract (FEB 04)**.
 - (2) If payment terms are approved, the Contractor shall pay the Government the full amount of **each** shipment no later than 30 calendar days after DNSC receives current, accurate and complete Shipping Instructions. Notwithstanding any other provision of the contract, payment is due with or without the issuance of an invoice by the Government.

If the Contractor fails to make payment timely, the Contractor will be considered delinquent (see Section **D.1.e., F.1.a., and G.10**), and the

Government, at its sole discretion, may revoke payment terms and take other appropriate action in accordance with Section **G.7**.

- b. If payment is not received by 4:30 p.m., local time Fort Belvoir, VA, on the payment due date, payment will not be credited until the next Government business day. Interest will accrue accordingly.
- c. In the event the payment due date falls on a Saturday, Sunday, or holiday, then the payment due date will be extended to the next Government business day.

13. **Section D, paragraph D.3 Interest (JUL 97)**

Delete paragraph D.3 in its entirety and substitute with the following:

D.3 Interest (JUN 02)

- a. All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 611, which is applicable to the period in which the amount becomes due, as provided in paragraph **b.**, below.
- b. Amounts shall be due at the earliest of the following dates:
 - (1) The final day of the contract period specified in Section **I.1 Sale of Government Property Negotiated Sales Contract (FEB 04)** (with or without the issuance of an invoice by the Government); or
 - (2) The date of the first written demand for payment under the contract.

14. **Section E, Paragraph E.1 Removal of Material (AUG 97)**

Delete paragraph E.1 in its entirety and substitute with the following:

E.1 Removal of Material (JAN 02)

- a. The contract period is based on the quantity of material awarded and begins on the date of contract award. The contract periods are as follows:

<u>Quantity</u> <u>Pounds</u>	<u>Contract period</u> <u>in Calendar Days</u>
40,000 – 200,000	30 Days
201,000 – 550,000	120 Days
550,001 – 1,000,000	180 Days
1,000,001 – 2,150,000	225 Days
2,150,001 – 5,900,000	270 Days
5,900,001 – and above	365 Days

- b. If the Contractor fails to pay for and remove the material on or before the last day of the contract period, Contractor will be considered delinquent and no material will be shipped until payment has been received.
- c. The contract period includes Saturdays, Sundays, and holidays. If the last day of the contract period is a Saturday, Sunday, or holiday, or the storage location is otherwise closed that day, the period of contract performance will be extended to the next Government workday.

15. **Section F, Paragraph F.1 Request for Shipment (FEB 98)**

Delete paragraph F.1 in its entirety and substitute with the following:

F.1 Request for Shipment (MAY 02)

- a. Delivery is F.O.B. carrier's conveyance. At least 10 working days prior to the date shipment is required to commence, the Contractor shall furnish commercial bills of lading to the designated depot. Simultaneously the Contractor shall complete and fax the form in Section **J.3 Shipping Instructions** to the Contracting Officer. The Government will only accept shipping instructions from those individuals designated in Section I.9 as being authorized to release material on behalf of the Contractor. **No material will be released under the provisions of this contract or any other contract the contractor has with DNSC until all outstanding delinquent charges and payments have been satisfied.**

- b.** “Shipping Instructions” shall include the following:
- (1) Quantity of material to be released.
 - (2) Designation of type and kind of conveyance.
 - (3) Name of the carrier (please include a telephone number where this contact can be reached).
 - (4) “Ship to” location.
 - (5) Minimum load per conveyance (optional)
 - (6) Desired shipping schedule.
 - (7) Name and telephone number of an agent who can furnish additional shipping information if needed.
 - (8) Any additional pertinent information.
- c.** The shipping schedule shall allow sufficient time for the Government to reasonably meet such schedule prior to the last day of the contract period commensurate with existing loading facilities and other commitments at the Government’s storage locations. Information regarding Government commitments may be obtained from the address specified in Section **J.1**.
- d.** If outloading is to be accomplished by truck the Government will provide lumber and nails from available depot stock if requested by the Contractor’s designee/driver. The Contractor’s designee shall perform any necessary procedure(s) to ensure the cargo is safely secured prior to leaving the depot. The Government will not block, chock, brace, lash, band, or in any manner secure the cargo on the Contractor’s conveyance(s). The designee shall witness the loading. Any expenses over and above those normally incurred by the Government to meet the public carrier’s requirements for loading like materials will be at the expense of the Contractor.
- e.** If outloading is to be accomplished by rail, the Government will provide materials and will block, chock, brace, and/or band as necessary to secure the cargo. The Government will not be responsible for demurrage charges.
- f.** Outloading can be accomplished by rail and or truck. Seneca Army Depot personnel will switch rail cars and will man the scales. This service will result in additional costs to the Contractor. If outloading is to be accomplished by truck the Contractor will be responsible for any damages to the roads on the Depot above normal wear and tear.
- g.** Contractor will be responsible for demurrage charges, damage to rail tracks and switches, or any costs associated with derailment.
- h.** The Contractor, its agents and employees shall comply with all applicable rules at the storage depot; Federal, state and local load limitations; and all safety, health, and environmental requirements.

- i. Requests for shipment shall be for a minimum of 40,000 lbs, or if the remaining balance is less than this quantity, then for the balance at the location or on the contract. Shipping instructions and information requested in paragraph b., above, are to be furnished to the following address:

DNSSC-C/Defense National Stockpile Center
ATTN: Vegetable Tannin Extract Contracting Officer

8725 John J. Kingman Road
Suite 3229
Ft. Belvoir, VA 22060-6223
Facsimile Number: 703-767-5494

- j. The Government shall determine the order in which the material is scheduled, coordinated, and outloaded.
- k. The Contractor shall pay \$100 per day if the Contractor's conveyance fails to report to an unstaffed storage location as scheduled. See Section J.2 for identification of unstaffed locations.

16. **Section F, Paragraph F.3 Weighing (JAN 95)**

Delete paragraph F.3 in its entirety and substitute with the following:

F.3 Weighing (APR 02)

- a. Conveyance (truck or van) shall be weighted both light (to determine tare) and heavy (after loading), with the tare weight deducted to arrive at the gross weight of the material. Net weight of the material will be determined by deducting 168 lbs per pallet and 1.75 lbs per bag from the gross weight of the material.
- b. Weighing shall be done by and at the expense of the Government.
- c. Weight Certificates shall be issued by the Government and will be final for payment purposes.

17. **Section F, Paragraph F.4 Weight Discrepancy (JAN 95)**

Delete paragraph F.4 in its entirety and substitute with the following:

- a. If the Contractor's weights for the material delivered vary from the Government's certified weights by more than one-half of one percent per shipment, the Contractor may give written notice of such difference to the Contracting Officer within two working days (exclusive of Saturdays, Sundays, and Government holidays) after receipt of the material at destination, requesting that the material be reweighed.
In that case, the Contractor shall segregate the shipment in question and hold it intact

pending reweighing. The entire shipment shall be reweighed by the Contractor at its expense, in the presence of and in the manner approved by a Government representative, using scales approved by the Government representative. If the weight varies from the Government's certified weight by greater than one fourth of one percent, plus or minus, that weight shall govern for payment purposes. If the weight determined by reweighing does not vary from the Government's certified weight by greater than one fourth of one percent, plus or minus, the Government's certified weight shall be final for payment purposes.

- b. No adjustment shall be considered or made in accordance with the above paragraph unless notice is given by the Contractor to the Contracting Officer within the time specified above and all other requirements of the paragraph are completed.

18. **Section F, Paragraph F.5 Assumption of Risk and Disclaimer of Liability (JUL 97)**

Delete paragraph F.5 in its entirety and substitute with the following:

F.5 Assumption of Risk and Disclaimer of Liability (JAN 02)

The Contractor, its assigns or agents, assumes full responsibility for all injury or damage to persons or property occasioned by or occurring in connection with or incident to any use or possession of this material by the Contractor, Contractor's employees, or any person subject to the Contractor's control. The Government assumes no liability for any damages to the property of the Contractor or any other person or property, or for any personal injury, illness, disability or death to the Contractor, Contractor's employees or any other person subject to Contractor's control, or for any other consequential damages arising from or incident to the purchase, use, loading, processing, disposition, or any subsequent operation performed upon, exposure to or contact with any component, part, constituent or ingredient of this item, material or substance.

19. **Section G, Paragraph G.2 Title (JAN 98)**

Delete paragraph G.2 in its entirety and substitute with the following:

G.2 Title (JUL 02)

Title to the material shall pass to the Contractor after payment is received or the material is shipped, whichever occurs first.

20. **Section G, Paragraph G.3 Risk of Loss (JAN 98)**

Delete paragraph G.3 in its entirety and substitute with the following:

G.3 Risk of Loss (JUL 02)

- a. After the award of the contract and prior to receipt of payment for or shipment of the material, whichever occurs first, the Government shall be responsible for the care and protection of the material, and any loss, damage or destruction occurring during such period will be adjusted by the Government.
- b. After receipt of payment but prior to either shipment or the end of the contract period, the Government shall be responsible only for the exercise of reasonable care for the protection of the material.
- c. After shipment or the end of the contract period, whichever occurs first, all risk of loss, damage, or destruction from any cause whatsoever, shall be borne by the Contractor.

21. **Section G, Paragraph G.5 Agency Protests (FEB 97)**

Delete paragraph G.5 in its entirety and substitute with the following:

G.5 Protests (NOV 02)

a. General. Companies may file a protest over sales under this Agreement with the

- 1) General Accounting Office (GAO)
- 2) Director, Directorate of Stockpile Contracts, DNSC, for a decision at a level above the Contracting Officer.
- 3) Contracting Officer

Unless otherwise specified, protests will be presumed to be protests to the Contracting Officer.

b. Pre-Award Protest

A protest by a company concerning the terms of this Agreement shall be filed before the company submits a completed Strategic Supply Alliance package as specified in Section B. Protests concerning the terms of any Request for Quotes hereunder shall be filed prior to the time set for receipt of quotes.

c. Post-Award Protests

Protests after award shall be filed not later than 10 calendar days after the basis of the protest is known or should have been known, whichever is earlier, except for protests challenging a sale under which a debriefing is requested and provided. In that situation, and where the basis was not known prior to the debriefing, the initial protest shall be filed not later than 10 calendar days after the date of the debriefing.

d. Service of Protest

- (1) Protests to the General Accounting Office shall be filed in writing, in accordance with 4 CFR 21, at the following address:
General Counsel
Attn: Procurement Law Control Group
U.S. General Accounting Office
441 G Street, NW
Washington, DC 20548

A copy of any protest to the GAO shall be served on the Contracting Officer at the address in (3) below, within one day of filing the protest. Firms seeking to file a protest with GAO are advised to consult the GAO regulations at 4 CFR 21 and the GAO publication, **Bid Protests at GAO: A Descriptive Guide**. Copies of these documents are available from the General Accounting Office.

- (2) As an alternative to filing a protest with the Contracting Officer, offerors may seek an independent review by filing an agency-level protest with the DNSC Director, Directorate of Stockpile Contracts. This process allows for a higher level decision on the initial protest. It is not a review of a Contracting Officer's decision on a protest filed with the Contracting Officer. A protest seeking an agency-level decision should clearly state that it is an "Agency Level Protest Under Executive Order 12979". The protest shall be served in writing at the following address and may be filed by mail, hand delivery, commercial carrier, or fax:

Attn: DNSC-C, Director, Directorate of Stockpile Contracts
Defense National Stockpile Center
8725 John J. Kingman Road, Suite 3229
Fort Belvoir, VA 22060-6223
Facsimile No.: (703) 767-5411

- (3) Protests seeking a decision by the Contracting Officer shall be served in writing at the following address and may be filed by mail, hand delivery, commercial carrier, or fax:

Attn: DNSC-C, Richard A. Talbott
Defense National Stockpile Center
8725 John J. Kingman Road, Suite 3229
Fort Belvoir, VA 22060-6223
Facsimile No.: (703) 767-5484 or (703) 767-5494

22. **Section G, Paragraph G.6 Disputes (JAN 95)**

Delete paragraph G.6 in its entirety and substitute with the following:

G.7 Disputes (MAY 03)

- a.** This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).
- b.** Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
- c.** "Claim," as used in this clause, means a written demand or written assertion by

one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

- d.** (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision.
- (2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.
- (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
- (iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."
- (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
- e.** For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- f.** The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.
- g.** If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

h. The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required); or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

i. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

23. Section G, Paragraph G.7 Default (JUL 97)

Delete paragraph G.7 in its entirety and substitute with the following:

G.7 Default (MAY 03)

- a.** (1) The Government may, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to –
- (i) Make payment and remove the material within the time specified in this contract or any extension;
 - (ii) Remove the material within the time specified in this contract whether or not payment has been made;
 - (iii) Make progress, so as to endanger performance of this contract; or
 - (iv) Perform any of the other provisions of this contract.
- (2) The Government's right to terminate this contract under a.(1)(iii) and a.(1)(iv) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure. Upon the Contractor's failure to cure such default within that period (or such further period as the Contracting Officer may allow), the Contractor shall lose all right, title and interest which it might otherwise have acquired in and to the material as to which a default has occurred.
- (3) If at any time prior to the expiration of this contract, the Contractor makes it clear either by words, actions or circumstances, that the Contractor is unwilling or unable to perform under this contract, the Government shall not be required to furnish the Contractor notice specifying the failure under this contract prior to exercising its right to terminate this contract for default and seek damages.

- b.** If the Government terminates the contract, the Contractor shall be held liable for damages as described below. However, in no event will damages exceed the original contract price.
- c.** If the Government terminates the contract for default, it may subsequently resell the material for the Contractor's account, under the terms and in the manner the Contracting Officer considers appropriate, and assess the Contractor the difference between the contract price and the price obtained on resale. In no event will the Contractor be refunded any money if the Government obtains a greater price on resale, nor will an accounting of money be made until resale is complete. In the event that the Government does not resell the material within 12 months, the Contractor may be held liable for the full contract price for the quantity of material on which the default has occurred.
- d.** If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.
- e.** The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

24. Section G, Paragraph G.10 Setoff of Funds (APR 96)

Delete paragraph G.10 in its entirety and substitute with the following:

G.10 Setoff of Funds (JUL 98)

The Contractor agrees that the Government may use all or a portion of any monies received by Government to satisfy, in whole or in part, any debt (e.g. delinquent payments, interest or storage charges), arising out of this or any other transaction.

25. **Section G, Paragraph G.11 Indemnification Agreement (JUN 96)**

Delete paragraph G.11 in its entirety and substitute with the following:

G.11 Indemnification Agreement (JAN 02)

The Contractor shall save and hold harmless and indemnify the Government against any and all liabilities, claims, and costs of any kind and nature for injury to or death of any person or persons and for loss or damage to any property (Government or otherwise) occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operations, or performance of work resulting from the acts or omissions of the Contractor, Contractor's employees, or any person subject to the Contractor's control in connection with the contract. Whether due to negligence or not of the Contractor, the Contractor agrees to reimburse the United States for any legal expenses (including salaries of attorneys) incurred by the United States in defending any and all claims or suits against the United States, whether well-founded or not, in any way whatsoever alleged to have arisen from the acts or omissions of the Contractor, Contractor's employees, or any persons subject to the Contractor's control.

26. **Section H, DEFINITIONS (JUN 95)**

Delete Section H in its entirety and substitute with the following:

SECTION H - DEFINITIONS (NOV 00)

As used throughout this Solicitation, the following terms shall have the meaning set forth below:

- a. The term "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings.
- b. The terms "Offeror", "Purchaser", or "Contractor" may be used interchangeably.
- c. The terms "shall" and "must" are used interchangeably.

27. **Section I – Submittals**

Delete submittal I.1 Sale of Government Property Negotiated Sales Contract (JUL 97) and substitute the attached I.1 Sale of Government Property Negotiated Sales Contract (FEB 04).

28. **Section I – Submittals**

Delete submittal I.2 Item Offer Page-DLA-VTE-001 (FEB 00), and substitute the attached I.2 Item Offer Page-DLA-VTE-001 (FEB 04).

I.1 Sale of Government Property Negotiated Sales Contract (FEB 04)

SALE OF GOVERNMENT PROPERTY NEGOTIATED SALES CONTRACT		CONTRACT NUMBER		PAGE	
				1 of Pages	
<p>This contract is entered into by and between the United States of America, hereinafter called the "Government," represented by the Contracting Officer executing this contract and the Contractor below identified. The Government agrees to sell and the Contractor agrees to buy the material described below in accordance with the terms and conditions of DLA-VTE-001. In the event of a conflict between the terms of the Solicitation and the Negotiated Sales Contract, the terms of the Negotiated Sales Contract shall govern.</p>					
ITEM	PROPERTY DESCRIPTION AND LOCATION	QUANTITY (No. of Unit(s))	UNIT	UNIT PRICE	AMOUNT
	CONTRACT PERIOD EXPIRES ON:				
EXECUTION BY CONTRACTOR			EXECUTION BY GOVERNMENT		
DATE (Day, Month, Year)			UNITED STATES OF AMERICA		DATE:
NAME OF CONTRACTOR			BY:		
ADDRESS (Street, City, State & Zip Code) (Type or Print)			NAME AND TITLE OF CONTRACTING OFFICER		
Telephone Number: _____ Facsimile Number: _____					
SIGNATURE AND TITLE OF PERSON AUTHORIZED TO SIGN THIS CONTRACT (Type or print name and title under signature)			Contracting Officer _____ (Agency)		

I.2 Item Offer Page-DLA-VTE-001 (FEB 04)									
ITEM NO.	STORAGE LOCATION	BRAND	LBS Offered	Base Year Quantity	Base year Unit Price Per/LB	Base Year Total Offer Price	Option Year Quantity	Option Year Unit Price Per/LB	Option Year Total Offer Price
Base Year - FY 2004									
500	BINGHAMTON, NY	LA CRUZ	232,560		\$	\$		\$	\$
502	HAMMOND, IN	FA	630,648		\$	\$		\$	\$
503	HAMMOND, IN	FONTANA	859,899		\$	\$		\$	\$
505	HAMMOND, IN	LA CRUZ	671,560		\$	\$		\$	\$
509	HAMMOND, IN	SASTRE	663,448		\$	\$		\$	\$
510	HAMMOND, IN	"Z"	2,126,527		\$	\$		\$	\$
511	HAMMOND, IN	ZORZAL	80,386		\$	\$		\$	\$
512	SOMERVILLE, NJ	LA CRUZ	5,599,580		\$	\$		\$	\$
513	SOMERVILLE, NJ	FORMOSA	553,340		\$	\$		\$	\$
514	SOMERVILLE, NJ	SAMUHI	105,860		\$	\$		\$	\$
515	SOMERVILLE, NJ	FA	903,080		\$	\$		\$	\$
516	SOMERVILLE, NJ	MIXED	6,787,940		\$	\$		\$	\$
517	WARREN, OH	MIXED BRANDS	7,032,200		\$	\$		\$	\$
504	HAMMOND, IN	GUARANI	631,920		\$	\$		\$	\$
Company Name: _____									
Name & Title of Authorized Company Official: _____									
Signature & Date: _____									
Telephone Number: _____									
Facsimile Number: _____									

Except as provided herein, all terms and conditions of DLA-VTE-001 remain unchanged and in full force and effect.

Failure to acknowledge receipt of this amendment may result in the Bidder being ineligible for award.

NAME OF FIRM: _____

ADDRESS: _____

BY: _____

SIGNATURE: _____

TITLE: _____

DATE: _____